

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between:

CITY OF WORCESTER

-and-

NAGE, LOCAL 495

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ARB-14-3888

Arbitrator:

Timothy Hatfield, Esq.

Appearances:

William Bagley, Esq.

- Representing City of Worcester

Timothy McGoldrick, Esq.

- Representing NAGE, Local 495

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

AWARD

The City had just cause to suspend Jonathan Camarra for one day on July 15, 2013 and the grievance is denied.

Timothy Hatfield, Esq.
Arbitrator
January 27, 2016

INTRODUCTION

NAGE, Local 495 (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the Department of Labor Relations (Department) appointed Timothy Hatfield, Esq. to act as a single neutral arbitrator with the full power of the Department. The undersigned Arbitrator conducted a hearing at the Worcester Department of Public Works on June 29, 2015.

The parties filed briefs on September 9, 2015.

THE ISSUE

Did the City have just cause to suspend Jonathan Camarra for one day on July 15, 2013? If not, what shall be the remedy?

RELEVANT CONTRACT LANGUAGE

The parties' Collective Bargaining Agreement (Agreement) contains the following pertinent provisions:

ARTICLE 11 GRIEVANCE PROCEDURE (In Part)

5. The award of the arbitrator shall be final and binding upon all parties, subject to the following conditions:

- a. The arbitrator shall make no award for grievances initiated prior to the effective date of this Article.
- b. The arbitrator shall have no power to add to, subtract from, or modify this contract or the rules and regulations of the City and the Charter, Ordinances and Statutes concerning the City, either actually or effectively.
- c. The arbitrator shall only interpret such items and determine such issues as may be submitted to him by the written agreement of the parties.
- d. Grievances may be settled without precedent at any stage of the procedure until the issuance of a final award by the arbitrator.

e. Appeal may be taken from the award to the Worcester Superior Court as provided for in paragraph 6.

6. Appeal from the arbitrator's award may be made to Superior Court on any of the following bases, and said award will be vacated and another arbitrator shall be appointed by the Court to determine the merits if:

a. The award was procured by corruption, fraud, or other undue means;

b. There was evident partiality by an arbitrator, appointed as a neutral, or corruption by the arbitrator, or misconduct prejudicing the rights of any party;

c. The arbitrator exceeded his powers by deciding the case upon issues other than those specified in sections 5(b) and (c), or exceeded his jurisdiction by deciding a case involving non-grievable matters as specified in Section 1, or rendered an award requiring the City, its agents, or representatives, the Union, its agents or representatives, or the grievant to commit an act or to engage in conduct prohibited by-law as interpreted by the Courts of this Commonwealth;

d. The arbitrator refused to postpone the hearing upon a sufficient cause being shown therefor, or refused to hear evidence material to the controversy or otherwise so conducted the hearing as to prejudice substantially the rights of a party;

e. There was no arbitration agreement on the issues that the arbitrator determined, the parties having agreed only to submit those items to arbitration as the parties had agreed to in writing prior to the hearing, provided that the appellant party did not waive his objection during participation in the arbitration hearing; but the fact that the award orders reinstatement of an employee with or without back pay or grants relief that would not be granted by a court of law or equity, shall not be grounds for vacating or refusing to confirm the award.

ARTICLE 36 PERMANENT APPOINTMENT: NON-CIVIL SERVICE EMPLOYEES (IN PART)

2. A permanent employee, as defined in this article, shall have the right to grieve his discharge or suspension by initiating a grievance to the City Manager, in accordance with the procedures set forth in Article II, §2(h), of this agreement. The action of the appointing authority shall be final, unless the action is found to be without cause by the arbitrator.

FACTS

The City of Worcester (City) and the Union are parties to a collective bargaining agreement that was in effect at all relevant times to this arbitration. The grievant Jonathan Camarra (Camarra) is a working foreman motor equipment repairman.

In April 2011, Camarra received a verbal warning that he was not to visit the City's Central Garage for any reason without obtaining prior authorization from his supervisor. On June 10, 2011, Camarra received a written warning for leaving the Sewer Operations Repair Yard to visit the Central Garage, without first receiving authorization from his supervisor to do so. Joseph Buckley (Buckley), the Assistant Director of Sewer Operations, reiterated that: "once again, you are not to visit the Central Garage for any reason, unless you have received specific prior authorization from your immediate Supervisor."

On March 16, 2012, Camarra received another written warning for leaving the Sewer Operations Yard without authorization when he took an unauthorized work break and left to go for coffee. In this written warning, Buckley stated:

[T]oo much time has been spent on this issue already. Simply follow directions; do not leave the Sewer Operations yard for any reason without receiving the prior explicit consent of your supervisor. It's that simple, I expect your immediate compliance. If you are involved in any similar incidents of this nature in the future, more severe disciplinary action, most likely a suspension from work without pay will immediately result.

On July 3, 2013, in Buckley's absence, Arthur Korp (Korp), a general foreman from the Water Operations Division was placed in temporary charge of the Sewer Operations Division. Korp told Camarra that he was not to leave the

Sewer Operations Yard for any reason while he was acting supervisor without first contacting him directly. On July 5, 2013, Korp observed Camarra driving in a Sewer Operations truck on Main Street in downtown Worcester. Camarra had not contacted him prior to leaving the Sewer Operations Yard. When questioned about why he had left the yard without authorization, Camarra stated that he was test driving the truck. At the hearing, Camarra also testified that he had attempted to contact Korp but had been unsuccessful.

On July 10, 2013, there was an incident involving a broken down Sewer Operations truck. The City argues that Cavalieri approached Camarra around 1:00 PM and told him to attend to the vehicle. The City claims that Camarra failed to follow Cavalieri's order and instead took a Sewer Operations crew truck with some co-workers to get coffee before arriving at the scene of the disabled truck. The Union argues that Camarra was on an approved coffee break when he received a call about the disabled truck and left from the convenience store to attend to the issue. The Union argues that Cavalieri never told Camarra of the disabled truck at 1:00 PM as he had claimed. Instead, the Union relies on Camarra's testimony that he had met with Cavalieri at 1:45 PM about parts, that Cavalieri approved Camarra's request to go for coffee and that Cavalieri never mentioned a disabled truck.¹ After arriving at the scene, and assessing the situation, Camarra had to return to the Sewer Operations Yard to get the service truck so he could remedy the situation.

¹ Based on my ruling below, it is not necessary to resolve this dispute of fact.

On July 12, 2013, Buckley suspended Camarra for one day based on the incidents of July 5, 2013 and July 10, 2013. The Union filed a grievance over the suspension, which was denied at all steps by the City and resulted in the instant arbitration.

POSITIONS OF THE PARTIES

THE EMPLOYER

Prior to July 2013, Camarra had a well-established history of engaging in insubordinate behavior by ignoring clear instructions from his supervisors that he was not permitted to leave the Sewer Operations Yard without receiving prior authorization. Despite receiving multiple warnings regarding his insubordinate behavior, Camarra persisted. Numerous times Camarra was warned by Buckley that he was not to leave the Sewers Operation Yard without prior authorization. On July 3, 2013, Korp, who was filling in for Buckley, discussed with Camarra that he was not to leave the yard without permission. On July 5, 2013, Korp witnessed Camarra driving on Main Street in a City truck without receiving permission to leave the Sewer Operations Yard. Based on Camarra's two prior written warnings for insubordination for leaving the Sewer Operations Yard without authorization, the City clearly had just cause to impose a one-day suspension.

In addition, on July 10, 2013, Camarra was involved in a second incident. The facts of this incident call into question Camarra's ability to follow the instructions of his supervisors. At approximately 1:00 P.M., a Sewer Operations truck broke down on the side of the road and was reportedly leaking coolant and overheating. Cavalieri approached Camarra and told him to attend to the disabled

vehicle. Instead of following his supervisor's orders, Camarra took a Sewer crew truck with some colleagues and went for coffee before reporting to the disabled vehicle. Once at the vehicle, Camarra was unable to fix the problem as he did not have his service truck with him and needed to return to the Sewer Operations Yard to retrieve the service truck before he was able to get the truck operational and back to the yard.

At the hearing, Cavalieri acknowledged that Camarra's work performance and attitude have improved since his suspension and Camarra's restrictions about leaving the yard have been softened. In the instant case, Camarra did not correct his behaviors following numerous written warnings. Following the suspension, however, it is apparent that he has made the appropriate corrections. In other words, the City's progressive discipline worked exactly the way it is intended.

For the foregoing reasons, the City asks that the arbitrator deny the grievance.

THE UNION

The City did not have just cause to suspend Camarra. The City failed to conduct a proper investigation into the July 10, 2013 incident, and the incident did not happen in the manner alleged by the City. Additionally, the Union contends that the incident of July 5, 2013, admitted by Camarra, with mitigating factors, does not serve in and of itself as a basis for a one-day suspension.

The City alleges just cause in its suspension letter to Camarra. There is no definition of just cause in the collective bargaining agreement. The term has been defined in case law, including in Grief Bros. Cooperage Corp., 42 LA 555 (1964).

In that case, the arbitrator set forth a seven step test for determining just cause.

The seven questions are:

1. Did the company give the employee forewarning or foreknowledge of the possible or probable disciplinary consequences to the employees conduct?
2. Was the company's rule reasonably related to the orderly, efficient safe operation of the company's business?
3. Did the company before administering discipline to an employee make an effort to discover whether or not the employee did in fact violate the rule or order of management?
4. Was the company's investigation conducted fairly and objectively?
5. At the investigation, did the judge obtain substantial evidence as proof that the employee was guilty as charged?
6. Has the company applied the rules and penalties evenhandedly and without discrimination to all employees?
7. Was the degree of discipline administered by the company in a particular case reasonably related to (a) the seriousness of the employee's proven offense (b) the record of the employee in his service with the company?

After considering the underlying facts and circumstances concerning the alleged violations for which Camarra was disciplined, the answer is a resounding no with respect to questions 3, 4, 5, and 7.

In the July 10th incident, Buckley undertook no substantive investigation into the incident at all. Buckley considered the case open and shut when he spoke to Cavalieri, a supervisor, and took Cavalieri's word that he allegedly told Camarra of the call at 1:15 PM. There were no witnesses interviewed by the City, and Cavalieri testified at the hearing that he learned much of what allegedly happened later in the day, from other sources. Additionally, Cavalieri did not dispute that a meeting

with Camarra and Pulsifer between 1:30 and 2:00 PM about parts and coffee, during which the disabled truck was mysteriously never mentioned.

There are two possible scenarios where an arbitrator could find that this conversation between Cavalieri and Camarra at 1:15 PM did not take place. First, Cavalieri is not being truthful. Second, Cavalieri is mistaken on the issue. Cavalieri is a busy individual with many responsibilities. It is certainly possible that he received a call around 1:00 PM about a disabled vehicle, that he intended to alert Camarra of the call and dispatch him to the scene, but mistakenly failed to do so. Yet, after the fact, he believes he alerted Camarra. This would better explain the later meeting with Camarra and Pulsifer, and the many other clear contradictions in this matter. This case may simply be a matter of failure to communicate, a mistake and a misunderstanding. The City has failed to prove otherwise. In disciplinary matters, the City has the burden of proof on the issues, including whether the incident occurred, as alleged. Camarra should be given the benefit of the doubt on factual issues.

The City may argue that Camarra has essentially admitted the allegations of the July 5th incident. The Union contends, however, that the incident of July 10th was the more serious allegation, and the driving force behind the one-day suspension. Additionally, Buckley's testified that the suspension was collectively based on both incidents, and there is no evidence on the record that the July 5th incident alone is serious enough to warrant a one-day suspension.

For all the foregoing reasons, the Union asserts that: the grievance should be upheld, all documents relative to Camarra's suspension be expunged from his

personnel file, and that Camarra be made whole for all losses associated with his suspension.

OPINION

The issue before me is: Did the City have just cause to suspend Jonathan Camarra for one day on July 15, 2013? If not, what shall be the remedy?

For all the reasons stated below, the City had just cause to suspend Jonathan Camarra for one day on July 15, 2013 and the grievance is denied.

There is no dispute that on July 5, 2013, Camarra left the Sewer Operations Yard in a City-owned truck and was observed by Korp, his acting supervisor, on Main Street in Worcester. There is also no dispute that Camarra was told on multiple occasions by multiple members of the DPW administration that he could not leave the Sewer Operations Yard without the permission of his supervisor. Finally, it is undisputed that Camarra had not received permission on July 5, 2013 to leave the Sewer Operations Yard. The fact that Camarra may have attempted to obtain permission, at a time when Korp was unavailable, is irrelevant. He did not have permission to leave the yard and did so, in direct contradiction to his explicit instructions. There was no compelling reason that Camarra had to leave the yard when he did. He simply could have waited for Korp to return to the DPW and sought permission to test drive the truck. He chose not to avail himself of this option. Moreover, the City on two prior occasions had disciplined Camarra with two separate written warnings for leaving the Sewer Operations Yard without authorization. There can be no dispute that the City had properly warned Camarra that his actions were unacceptable and that he needed to correct them or face

additional discipline. Undeterred, Camarra ignored the City's directive and left the yard without authorization. Based on these actions alone, the City had just cause to suspend Camarra for one day.

As for the incident on July 10, 2013, based on my ruling above, I need not render an opinion on the disputed timeline. Whether Camarra was informed of the disabled vehicle prior to leaving on a coffee break with his co-workers, or was informed while already out for coffee, does not change the fact that Camarra's actions on July 5, 2013, combined with his prior disciplinary record, supplied the City with just cause for a one-day suspension.

AWARD

The City had just cause to suspend Jonathan Camarra for one day on July 15, 2013 and the grievance is denied.

Timothy Hatfield, Esq.
Arbitrator
January 27, 2016